

DGR

Court File No.: M43049

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

JOANNE ST. LEWIS

Plaintiff
(Respondent)

- and -

DENIS RANCOURT

Defendant
(Moving Party)

- and -

UNIVERSITY OF OTTAWA

Rule 37 Affected Party
(Respondent)

FACTUM OF JOANNE ST. LEWIS
(Defendant's Motion for Leave to Appeal Costs Decision)

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PART I – FACTS

A. OVERVIEW

1. The self-represented Defendant Denis Rancourt seeks leave to appeal a partial indemnity costs award.
2. The Plaintiff Professor Joanne St. Lewis is a leading equality rights and anti-racism expert in Canada and the first Black Bencher of the Law Society of Upper Canada. Professor St. Lewis has sued the Defendant for libel regarding blogs he published calling her the House Negro of University of Ottawa President Allan Rock. The Defendant filed a motion to have Professor St. Lewis' libel action stayed or dismissed as an abuse of process based upon an alleged champerty agreement between Professor St. Lewis and the University of Ottawa (the "Champerty Motion").
3. Ontario Superior Court of Justice Robert Smith dismissed the Defendant's Champerty Motion with costs. The Court of Appeal dismissed the Defendant's appeal with costs (\$20,000 to Professor St. Lewis and \$15,000 to the University).
4. Justice Smith held in his *Costs Decision* that both Professor St. Lewis and the University of Ottawa were completely successful in defending the Champerty Motion. Justice Smith found that the matters were of very high importance to Professor St. Lewis as the Defendant's publications affected her reputation as a lawyer and a Law Professor. Justice Smith concluded that the matter was very factually complex due to the extensive materials and extensive allegations of fact made by the Defendant which had to be addressed.

5. Leave to appeal a costs decision is granted sparingly and only in obvious cases because costs decisions are highly discretionary and are accorded a high degree of deference. Professor St. Lewis sought \$79,556 in partial indemnity costs and Justice Smith awarded \$50,000 plus HST plus disbursements of \$2000. Justice Smith properly exercised his discretion in awarding costs and is in the best position to determine the entitlement, scale and quantum of costs. Justice Smith's cost decision was not plainly wrong with the result that leave to appeal his costs decision should be denied with costs.

B. FACTS

6. The Defendant seeks leave to appeal Justice Robert Smith's "Costs Decision On Mr. Rancourt's Champerty Motion" rendered on October 4, 2013.

St. Lewis v Rancourt, 2013 ONSC 6118 (CanLII), Book of Authorities of Joanne St. Lewis [BOA], Tab 1 [Champerty Costs Decision].

7. The Defendant Rancourt is the self-represented Defendant in a libel action commenced by University of Ottawa Law Professor Joanne St. Lewis. The Defendant published blogs calling Professor St. Lewis the House Negro of University of Ottawa President Allan Rock with respect to an evaluation report she authored at the request of the University of Ottawa in the course of her duties as an employee of the University. As a result, the University of Ottawa agreed to pay the legal fees of Professor St. Lewis' counsel in this libel action.

8. On January 5, 2012, the Defendant filed a motion seeking an order to dismiss or stay the libel action against him as an abuse of process, because he alleged that the University of Ottawa's agreement to pay Professor St. Lewis' legal costs constituted champerty and maintenance. Between January 5 and December 13, 2012, the Defendant filed over 10

motions/appeals relating to his Champerty Motion (including a leave application before the Supreme Court of Canada). The Defendant's Champerty Motion was heard on December 13, 2012 and was dismissed with costs by Justice Smith on March 13, 2013 ("Champerty Decision").

St. Lewis v Rancourt, 2013 ONSC 1564 (CanLII), BOA, Tab 2.

9. The Defendant appealed Justice Smith's Champerty decision to the Court of Appeal. The appeal was argued before Justices Hoy, Sharpe and Blair on November 8, 2013 and was dismissed from the Bench with costs. The Court of Appeal awarded costs in the amount of \$20,000 to Professor St. Lewis (all inclusive) and \$15,000 to the University of Ottawa (all inclusive). By letter dated December 13, 2013 to the Registrar of the Court of Appeal, the Defendant has stated that he will be filing an application for leave to appeal to the Supreme Court of Canada.

St. Lewis v Rancourt, 2013 ONCA 701 (CanLII), BOA, Tab 3.

10. On October 4, 2013, Justice Smith released his *Costs Decision On Mr. Rancourt's Champerty Motion*, in which partial indemnity costs were awarded to Professor St. Lewis in the amount of \$50,000 plus HST plus disbursements of \$2000 inclusive of HST. Partial indemnity costs were awarded to the University of Ottawa in the amount of \$40,000 plus HST plus disbursements of \$2000 inclusive of HST.
11. The issues raised by the Defendant in this motion for leave to appeal the *Costs Decision* are whether:
 - (a) the costs award to the Plaintiff is consistent with the law and principles governing costs;

- (b) the costs award is consistent with *Charter* principles regarding the right to free expression and access to justice;
- (c) there was any evidence of the Defendant's impecuniosity that Justice Smith did not recognize or consider;
- (d) the quantum of the costs award against the Defendant is fair and reasonable;
- (e) the University of Ottawa is entitled to costs; and
- (f) the Plaintiff and the University of Ottawa are entitled to costs for preparation of and attendance at case conferences.

PART II – PROFESSOR ST. LEWIS’ POSITION WITH RESPECT TO THE ISSUES RAISED

A. THE TEST FOR LEAVE TO APPEAL A COSTS DECISION

12. Cost awards are discretionary and should not be lightly interfered with. A judge of first instance is in the best position to determine the entitlement, scale and quantum of any such award.

Lloyds Syndicate 1221 (Millenium Syndicate) v Coventree Inc, 2012 ONCA 341 (CanLII) at para 48, BOA, Tab 4;

McNaughton Automobile Ltd v Co-operators General Insurance Co, 2008 ONCA 597 (CanLII) at para 27 [McNaughton], BOA, Tab 5.

Courts of Justice Act, RSO 1993, c C43, s 133, Schedule B.

13. Leave to appeal a costs decision is granted sparingly and only in obvious cases. This is because decisions as to costs are highly discretionary and are accorded a very high degree of deference. Generally, they will only be interfered with where it can be demonstrated that the decision maker is plainly wrong or has made an error in principle.

Credifinance Securities Limited v DSLC Capital Corp, 2011 ONCA 160 (CanLII) at para 47, BOA, Tab 6;

McNaughton, supra, at paras 23-26, BOA, Tab 5.

14. The Defendant has failed to demonstrate that Justice Smith’s costs decision was plainly wrong or that he made an error in principle in awarding partial indemnity costs against the Defendant.

B. THE COSTS AWARD TO THE PLAINTIFF IS CONSISTENT WITH THE LAW AND PRINCIPLES GOVERNING COSTS

15. Paragraphs 37-46 of the Defendant’s Factum allege that Professor St. Lewis does not require indemnity for legal costs because the University of Ottawa is paying her legal fees and raises the prospect of double recovery of costs. This submission is without basis in the law and contradicts the fact that the Court of Appeal awarded \$35,000 in costs

against the Defendant regarding his appeal of Justice Smith's dismissal of his Champerty Motion.

16. Further, In *Hill v Church of Scientology of Toronto*, where the plaintiff's libel action was entirely funded by the Ministry of the Attorney General of Ontario, Justice Carruthers ruled during the trial that details of the plaintiff's arrangements with his employer concerning the costs incurred by him in proceeding with this action were not relevant to the libel action. The plaintiff obtained a jury verdict of \$1.6 million in total damages plus costs from Justice Carruthers.

Hill v Church of Scientology of Toronto, [1992] OJ No 451 (SCJ) at paras 8, 12, aff'd [1995] 2 SCR 1130 [*Hill v Church of Scientology*], BOA, Tab 7.

17. Justice Smith correctly held:

No Costs Incurred by Plaintiff that Require Indemnification

[15] I have previously ruled that the fact that the University is indemnifying St. Lewis for her legal costs in this libel action, including the costs incurred in this champerty motion, is not a valid reason to refuse to award costs to the successful party following an interlocutory motion, as mandated in Rule 57.03. I adopt the reasons I gave in *St. Lewis v. Rancourt*, 2012 ONSC 3320 (CanLII), 2012 ONSC 3320 and in *St. Lewis v. Rancourt*, 2012 ONSC 5998 (CanLII), 2012 ONSC 5998, where I held that the fact that the University was paying for St. Lewis' costs was not a valid reason for refusing to award costs to the successful party.

[16] In *Hill v. The Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, the plaintiff's libel action against the Church of Scientology was entirely funded by the Ministry of the Attorney General of Ontario. The Supreme Court upheld the ruling that details of the plaintiff's arrangements with his employer concerning the costs incurred by him in the legal proceeding were not relevant to the libel action. For the same reasons as set out in my previous decisions *St. Lewis v. Rancourt*, 2012 ONSC 3320 (CanLII), 2012 ONSC 3320 and *St. Lewis v. Rancourt*, 2012 ONSC 5998 (CanLII), 2012 ONSC 5998, I find that the arrangements between St. Lewis and the University as to the payment of costs and the University's right to recover costs awarded to St. Lewis in the proceeding are not relevant to the libel action and do not prevent the awarding of costs to the successful parties on a motion.

Champerty Costs Decision, supra, at paras 15-16, BOA, Tab 1.

C. THE DEFENDANT'S CHARTER RIGHTS ARE NOT INFRINGED

18. The Defendant alleges at paragraphs 47-52 of his Factum in the circumstances of the libel action, the awarded costs are inconsistent with *Charter* principles regarding the right to free expression. The Defendant further argues that defamation actions attract special *Charter* considerations and that the action has characteristics of a “strategic lawsuit to intimidate” (SLAPP).
19. In the *Champerty Decision*, Justice Smith rejected the Defendant’s arguments that the libel action was intended to silence or stigmatize him:

[87] Rancourt speculates and alleges that Allan Rock as President of the University had an improper motive for funding St. Lewis’ libel action against him. He alleges that the University agreed to fund her defamation action in order to stigmatize and silence him after the University dismissed him from his full tenured professorship on April 1, 2009.

[88] There can be no maintenance if the University had a legitimate reason or justification for assisting the litigant. The evidence is uncontradicted from President Rock, Mr. Giroux, Dean Feldthusen and St. Lewis that, the University’s reasons for assisting St. Lewis by paying her legal fees, was to defend her reputation. The reasons were set out in the letter from its counsel, David Scott, namely, because her reputation was attacked during the course of her employment by the University and also because the University felt that it had a moral obligation to assist her to defend her reputation in these special circumstances from a racist attack.

[89] In *Hill v. Church of Scientology of Toronto*, 1995 CanLII 59 (SCC), [1995] 2 S.C.R. 1130, the Supreme Court of Canada made several comments about the fact that the Ontario Government paid for the legal fees for the Crown Attorney, S. Casey Hill, to sue the Church of Scientology for libel. Similar allegations to those made by Rancourt were levelled at the Ontario Government. Paragraph 70 of the *Hill* decision reads as follows:

They further submit that Casey Hill commenced these legal proceedings at the direction and with the financial support of the Attorney General in order to vindicate the damage to the reputation of the Ministry resulting

from criticism levelled at the conduct of one of its officials. It is, therefore, contended that this action represents an effort by a government department to use the action of defamation to restrict and infringe the freedom of expression of the appellants in a manner that is contrary to the Charter.

[90] At para. 71, the Supreme Court states that “These submissions cannot be accepted. They have no legal, evidentiary or logical basis of support.” At para. 75, the Court continued by stating that “The appellants impugned the character, competence and integrity of Casey Hill, himself, and not that of the government. He, in turn, responded by instituting legal proceedings in his own capacity.”

[91] In *Hill v. Church of Scientology of Toronto, ibid*, the Government of Ontario paid for the legal costs for one of its Crown Attorney, S. Casey Hill, to fund a libel action against the Church of Scientology. Rancourt is speculating that the University had other improper motives, namely to silence him. However, they are not supported by any evidence as his allegation denied by President Rock, by St. Lewis, by Dean Feldthusen and by Mr. Giroux. The University does not deny that it terminated Rancourt and he is involved in a labour arbitration with his union to determine whether his dismissal was justified. This is a separate issue and does not constitute evidence of an improper motive on the part of the University.

[92] Rancourt’s speculation that the University agreed to pay St. Lewis’ legal costs of her defamation action in order to silence and stigmatize him is unsupported by any evidence. Even if the April 23rd and May 23rd affidavits were considered, I find that the evidence introduced by Rancourt does not contradict the evidence of Mr. Rock, Ms. St. Lewis, Dean Feldthusen or Mr. Giroux, with regards with the reasons that the University agreed to fund St. Lewis’ defamation action against the defendant. As a result, there is no issue of credibility on these matters that require a trial of an issue.

[93] The situation for St. Lewis is very similar to those in the case of *Hill v. Church of Scientology* as St. Lewis was an employee and made her own decision to commence a libel action to defend her reputation and the University, as her employer, agreed to pay for her legal costs because her reputation was damaged in the course of her employment. I find that the University had a legitimate reason for assisting St. Lewis and there is no evidence that the University agreed to fund St. Lewis’ libel action for an improper purpose or based on an improper motive.

St. Lewis v Rancourt, 2013 ONSC 1564 at paras 87-93, BOA, Tab 2.

20. Justice Smith’s Costs Decision does not infringe the Defendant’s *Charter* rights. Justice Smith properly exercised his discretion in accordance with longstanding costs principles that are consistent with *Charter* values.

D. THE DEFENDANT HAS NOT BEEN DENIED ACCESS TO JUSTICE

21. Paragraphs 53-59 of the Defendant's Factum allege that Justice Smith did not recognize or disregarded the Defendant's evidence about impecuniosity and did not take the Defendant's impecuniosity into account. The Defendant further claims that the costs order will prevent the Defendant from access to justice. These allegations are unfounded.
22. In *Myers v Toronto (Metropolitan Police Services)* the Divisional court held that impecuniosity cannot be used to provide a shield against costs sanctions and it is important to avoid a situation in which litigants without means can ignore the rules of the court with impunity:

[19] A rule based on impecuniosity would defy consistent interpretation and application. What would be the definition of "impecuniosity"? Would it depend on the income and expenses of the party claiming impecuniosity? If so, would expenditures on only the bare necessities of life be considered as justifiable? Would it depend on assets and liabilities? If so, must all assets be fully encumbered before one is impecunious?

[20] Even if the meaning of a rule based on impecuniosity could be established, by what process could the Court or the opposing party check on the truthfulness and accuracy of the claim? Could there be examinations during the course of an action similar to examinations in aid of execution? These potential problems, in my opinion, provide sound practical reasons for not permitting alleged impecuniosity to provide a shield against cost sanctions.

[...]

[22] Because of the importance of avoiding a situation in which litigants without means can ignore the rules of the court with impunity, and the distastefulness of creating a rule incapable of consistent application, the learned trial judge in the case at bar, in my opinion, acted reasonably in refusing to take into account the impecuniosity of the plaintiff. The Orders fell squarely within his discretionary power. The appeal is dismissed.

Myers v Toronto (Metropolitan) Police Force, [1995] OJ No 1321 (Ont Div Ct) at paras 19-20, 22, BOA, Tab 8. (Emphasis added)

23. Justice Smith correctly held:

[33] Mr. Rancourt submits that his inability to pay is a factor which should reduce the amount of costs awarded. I previously rejected this argument in *St. Lewis v. Rancourt*, 2012 ONSC 5998 (CanLII), 2012 ONSC 5998 at paras. 8 and 25. In para. 25 I stated as follows:

Mr. Rancourt submits that he is unable to pay costs due to the loss of his employment. I do not have sufficient evidence before me to determine whether or not Mr. Rancourt is unable to pay legal costs. Whether he has made himself judgment proof as alleged by Ms. St. Lewis in her submissions by recently transferring his interest in his home to his spouse for \$1.00 is not a reason for not awarding reasonable costs to the successful party. I am also unaware of how successful he has been with his online solicitation of financial support for his legal costs. Mr. Rancourt's alleged inability to pay costs is not a factor given much weight in the circumstances where his own conduct has caused the responding party to incur substantial legal costs to reasonably respond.

[34] I adopt my previous statement and the decision of the Divisional Court in *Myers v. Toronto (Metropolitan) Police Force*, [1995] O.J. No. 1321, at paras. 19 to 22 which held that it was important to avoid a situation where a person without means can cause responding parties to incur substantial legal costs without any financial consequences. (emphasis added)

Champerty Costs Decision, supra, at paras 33-34, BOA, Tab 1.

24. Justice Smith properly exercised his discretion in finding that the Defendant's alleged inability to pay costs is not a factor to be given much weight in circumstances where his own conduct has caused the responding party to incur substantial legal costs.

25. The Defendant's access to justice has never been denied – the Defendant filed over 10 motions/appeals relating solely to his Champerty Motion. The Defendant's motions/appeals are never-ending. The next appeal the Defendant is filing was notified through his December 13, 2013 letter to the Registrar of the Court of Appeal advising that he is filing with the Supreme Court of Canada an application for leave to appeal the

Court of Appeal's November 8, 2013 decision dismissing his appeal of the *Champerty Decision*.

26. The Defendant has initiated proceedings at every level of court in the country – the Supreme Court of Canada, the Court of Appeal, the Divisional Court and the Superior Court of Justice. It simply does not lie in the mouth of the Defendant to allege he is being denied access to justice – to the contrary, he is a vexatious litigant.
27. In paragraph 91 of the Defendant's Costs Submissions to Justice Smith, the Defendant admits that he has some registered savings and has initiated a legal fund for donations to pay for costs in this libel action. The Defendant's Costs Submissions also state in paragraph 93 that he made a "gift" to his spouse of his share in the matrimonial home (he transferred his 60% interest in his home to his spouse for \$1). This "gift" was made after costs awards were made against the Defendant and with full knowledge that he had exposure to many more potential costs awards in this libel action. The Plaintiff takes the position that the Defendant engaged in a fraudulent conveyance under the *Fraudulent Conveyances Act* in order to judgment-proof himself in this libel action. To date, the Defendant has left a trail of \$247,000 in unpaid costs awards yet he continues to file new motions/appeals.

Appellant's Motion Record-Leave To Appeal Costs, Tab 13, page 73.

E. THE QUANTUM OF COSTS IS FAIR AND REASONABLE

28. Paragraph 60 of the Defendant's Factum alleges that the quantum of costs is unfair and unreasonable. Justice Smith made no error in awarding the quantum of cost, having carefully considered that:

- (i) Professor St. Lewis and the University were entirely successful on the motion;
- (ii) the hourly rates of counsel were proportional to their experience and reputation and the Defendant was aware of these rates;
- (iii) time spent by counsel was reasonable in view of the Defendant's extremely lengthy materials and factually complex allegations of the Defendant that brought about examinations of multiple witnesses and had to be addressed by the Respondents.

29. An enormous amount of work was required to defend the Defendant's Champerty Motion:

- (i) Review of Defendant's Motion Record and Affidavit of **1,362 pages** ;
- (ii) Preparation of Responding Motion Record, Supplementary Responding Motion Record, Affidavit of Professor St. Lewis and Affidavit of Dean Feldthusen;
- (iii) Cross-examination on Affidavits – preparation and attendance for cross-examination of Professor St. Lewis and Dean Feldthusen;
- (iv) Review of Defendant's Factum (22 pages) and Book of Authorities (340 pages);

- (v) Legal research on six separate issues: 1. Champerty and maintenance; 2. stay or dismissal of libel action as abuse of process; 3. The inadmissibility of an affidavit; 4. Whether a trial of an issue should be ordered; 5. *res judicata*; 6. collateral attack on an order;
- (vi) Drafting Responding Factum - the Plaintiff filed a 48 page Factum that set out detailed evidentiary citations regarding each element of the Defendant's Champerty Motion. The Plaintiff's Factum included evidentiary references to: **530 pages of transcripts** of cross-examinations (Professor St. Lewis (166 pages), Dean Bruce Feldthusen (50 pages), President Allan Rock (140 pages), Celine Delorme (68 pages) and the examination of U of O Board of Governors Chair Robert Giroux (106 pages)); and **220 pages of affidavits** (including exhibits): Professor St. Lewis (165 pages), Dean Bruce Feldthusen (14 pages), President Allan Rock (9 pages) and Celine Delorme (32 pages). All of this evidence had to be reviewed in detail to draft the Plaintiff's Factum.

30. Justice Smith's Costs Decision correctly concluded that the Defendant's conduct of the litigation in the Champerty Motion added immeasurably to the cost and time spent on responding to the motion:

[36] In the course of the champerty motion Rancourt brought a number of motions which the University submits required communications with its client and an evaluation to consider its position and to determine whether its interests were affected, which increased the time required to be spent on this motion. The University submits that what was a relatively straightforward application of the law of champerty and maintenance to the facts became a piece of litigation which took on a life of its own due to Rancourt's conduct of the litigation, which has added immeasurably to the cost and time. I agree with this submission.

[37] Rancourt is a self-represented individual in these proceedings. However, I do not find that this is a reason for denying costs to the successful respondents to his motion. His actions caused the University and St. Lewis to spend substantial amounts of time to respond to multiple factual allegations and numerous steps in the proceeding. As a result, considering all of the above factors, I order Rancourt to pay the University \$40,000.00 plus HST plus disbursements fixed in the amount of \$2,000.00 inclusive of HST.

[38] Based on the above principles set out in Rule 57, including the complexity of the matter, the time spent, and the reasonable expectations of the unsuccessful party given the extensive materials filed, Rancourt is ordered to pay costs to St. Lewis fixed at the sum of \$50,000.00 plus HST plus disbursements of \$2,000.00 inclusive of HST.

Champerty Costs Decision, supra, at para 36, BOA, Tab 1.

31. The stakes for Professor St. Lewis in opposing the Defendant's Champerty Motion could not be higher. If the Defendant's motion to dismiss Professor St. Lewis' libel action was successful, she would forever be branded as a House Negro and found to have abused the court's process as a lawyer and Law Professor, a serious charge that Justice Smith agreed that Professor St. Lewis had to defend. There were over a thousand pages of evidence in the motion records and transcripts of cross-examinations – the Defendant was responsible for the work that was required to defend his Champerty Motion and Justice Smith properly exercised his discretion in the quantum of costs he awarded to Professor St. Lewis and the University of Ottawa.

F. COSTS FOR PREPARATION OF AND ATTENDANCE AT CASE CONFERENCES

32. Paragraphs 74-81 of the Defendant's Factum allege that costs should not be awarded for case conferences.
33. In *2038724 Ontario Limited v Quizno's Canada Restaurant Corporation*, (2010), Perrell J. stated:

[44] With respect to event 8 (case conferences), I have deferred any award. Case conferences are not always adversarial and thus present problems about whether or not it is appropriate to order costs of what might be a co-operative meeting designed to advance the class proceeding. Speaking generally, I think that the outcome of the litigation may be a relevant factor in determining whether costs should be awarded for a case conference, although in some situations it would be appropriate to order costs of a case conference immediately.

2038724 Ontario Limited v Quizno's Canada Restaurant Corporation, 2010 ONSC 5390 (CanLII) at para 44, BOA, Tab 9;
Kaverimanian v Kaverimanian, 2013 ONSC 5265 (CanLII) at paras 43-44, BOA, Tab 10.

34. The outcome of the Champerty Motion was that Professor St. Lewis and the University of Ottawa were completely successful. The Defendant's conduct of the litigation brought about the necessity for five case conferences and Justice Smith properly exercised his discretion in awarding costs for attending these case conferences.

Champerty Costs Decision, supra, at para 32, BOA, Tab 1.

G. CONCLUSION

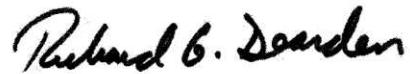
35. Justice Smith found that the matters in the Champerty Motion were of very high importance to Professor St. Lewis as the Defendant's publications affected her reputation as a lawyer and a Law Professor. Justice Smith concluded that the matter was very factually complex due to the extensive materials and extensive allegations of fact made by the Defendant Rancourt which had to be addressed by Professor St. Lewis and the University of Ottawa.
36. Leave to appeal a costs decision is granted sparingly and only in obvious cases because costs decisions are highly discretionary and are accorded a high degree of deference. Professor St. Lewis and the University of Ottawa were completely successful in defending the Champerty Motion. Professor St. Lewis sought \$79,556 in partial indemnity costs and Justice Smith awarded \$50,000 plus HST plus disbursements of

\$2000. Justice Smith properly exercised his discretion in awarding costs and is in the best position to determine the entitlement, scale and quantum of costs. Justice Smith's cost decision was not plainly wrong – leave to appeal his costs award should be denied with costs.

PART III – STATEMENT OF ADDITIONAL ISSUES

37. The Defendant has included extraneous material in his “Appellant’s Motion Record – Leave To Appeal Costs”. Professor St. Lewis submits that this motion should be decided based upon the costs submissions that were before Justice Smith. These materials are:

- (i) Costs Outline of Joanne St. Lewis (pp. 45-54, Tab 11 of the Appellant’s Motion Record);
- (ii) Costs Outline of the University of Ottawa (pp. 55-58, Tab 12 of the Appellant’s Motion Record);
- (iii) Costs Submissions of the Defendant (pp. 59-96, Tab 13 of the Appellant’s Motion Record);
- (iv) Professor St. Lewis’ Reply (pp. 97-118, Tab 14 of the Appellant’s Motion Record); and
- (v) Reply of the University of Ottawa (pp. 119-120, Tab 15 of the Appellant’s Motion Record).



Date: December 16, 2013

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SCHEDULE A – LIST OF AUTHORITIES

1. *St. Lewis v Rancourt*, 2013 ONSC 6118 (CanLII)
2. *St. Lewis v Rancourt*, 2013 ONSC 1564 (CanLII)
3. *St. Lewis v Rancourt*, 2013 ONCA 701 (CanLII)
4. *Lloyds Syndicate 1221 (Millenium Syndicate) v Coventree Inc*, 2012 ONCA 341 (CanLII)
5. *McNaughton Automobile Ltd v Co-operators General Insurance Co*, 2008 ONCA 597 (CanLII)
6. *Credifinance Securities Limited v DSLC Capital Corp*, 2011 ONCA 160 (CanLII)
7. *Hill v Church of Scientology of Toronto*, [1992] OJ No 451 (SCJ), aff'd [1995] 2 SCR 1130
8. *Myers v Toronto (Metropolitan) Police Force*, [1995] OJ No 1321 (Ont Div Ct)
9. *2038724 Ontario Limited v Quizno's Canada Restaurant Corporation*, 2010 ONSC 5390 (CanLII).
10. *Kaverimanian v Kaverimanian*, 2013 ONSC 5265 (CanLII).

SCHEDULE B – STATUTES, REGULATIONS AND BY-LAWS

1. Courts of Justice Act, RSO 1993, c. C.43, ss.131, and 133

Costs

131.(1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid. R.S.O. 1990, c. C.43, s. 131 (1).

Crown costs

(2) In a proceeding to which Her Majesty is a party, costs awarded to Her Majesty shall not be disallowed or reduced on assessment merely because they relate to a lawyer who is a salaried officer of the Crown, and costs recovered on behalf of Her Majesty shall be paid into the Consolidated Revenue Fund. R.S.O. 1990, c. C.43, s. 131 (2); 1994, c. 12, s. 45.

Leave to Appeal Required

133.No appeal lies without leave of the court to which the appeal is to be taken, (a) from an order made with the consent of the parties; or (b) where the appeal is only as to costs that are in the discretion of the court that made the order for costs. R.S.O. 1990, c. C.43, s. 133.

2. Rules of Civil Procedure, Rule 57.01(1)

57.01(1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

(a) the amount claimed and the amount recovered in the proceeding;

(b) the apportionment of liability;

(c) the complexity of the proceeding;

(d) the importance of the issues;

(e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;

- (f) whether any step in the proceeding was,
 - (i) improper, vexatious or unnecessary, or
 - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
 - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
 - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
- (i) any other matter relevant to the question of costs. R.R.O. 1990, Reg. 194, r. 57.01

(1); O. Reg. 627/98, s. 6; O. Reg. 42/05, s. 4 (1); O. Reg. 575/07, s. 1.

Joanne St. Lewis

Plaintiff
- and - Denis Rancourt
Defendant

Court File No. M43049

COURT OF APPEAL FOR ONTARIO
PROCEEDING COMMENCED AT
TORONTO

FACTUM OF JOANNE ST. LEWIS
(Defendant's Motion for Leave to Appeal Costs Decision)

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